

STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD

IN RE:

SUMMIT CARBON SOLUTIONS, LLC

DOCKET NO: HLP-2021-0001

**SUMMIT AGRICULTURAL GROUP, LLC AND BRUCE RASTETTER'S
RESISTANCE TO MOTION TO SUBPOENA**

COMES NOW Summit Agricultural Group, LLC and its member, Bruce Rastetter, by and through the undersigned counsel, and hereby state as follows in resistance to the Motion to Subpoena Bruce Rastetter filed by Intervenor Kerry Mulvania Hirth (“Intervenor Hirth”).

INTRODUCTION

Intervenor Hirth, by and through her counsel, Anna K. Ryon,¹ is attempting to create an irrelevant sideshow by requesting that the Iowa Utilities Board issue a subpoena during the middle of a scheduled hearing for the testimony of a member of a non-party pursuant to Iowa Code section 17A.13.

Intervenor Hirth’s Motion is based on a theory that Summit Carbon Solutions, LLC (“Summit Carbon Solutions”) is part of a larger “corporate enterprise” of Summit Agricultural Group (“Summit Ag”) that “may” give rise to a “vertically integrated monopoly in violation of Iowa Code section 553.5” based on Summit Ag’s ownership of an ethanol plant in Brazil and its interest in sustainable aviation fuel production. According to Intervenor Hirth, this theory requires the Iowa Utilities Board to subpoena Summit Ag’s member, Bruce Rastetter (“Mr. Rastetter”), to “testify in

¹ Currently pending before the Iowa Utilities Board is a Renewed Motion to Prohibit Future Filings and Motion to Disqualify Anna Ryon filed by the Office of Consumer Advocate on August 25, 2023.

person about the entire corporate structure of Summit Agricultural Group and its business ventures, and how Summit Carbon Solutions, LLC fits into the overall scheme of Summit Agricultural Group's business ventures." (Motion at p. 6).

Intervenor Hirth's effort to have the Iowa Utilities Board issue a subpoena to Mr. Rastetter, who is not an employee of Summit Carbon Solutions, to testify in this proceeding regarding the corporate structure of a non-party is simply part of an improper strategy by Intervenor Hirth to grandstand on irrelevant and unsupported theories in opposition to the pipeline. The Motion should be summarily denied.

ARGUMENT IN RESISTANCE

I. The Motion Should be Denied as Untimely.

Intervenor Hirth's motion is untimely and should be denied by the Board on this basis alone. Intervenor Hirth moves for a subpoena pursuant to Iowa Code section 17A.13. Iowa Administrative Code rule 199-7.16 provides that absent a showing of good cause, a request by a party for a subpoena must be received by the agency at least seven days before the scheduled hearing. Iowa Admin. Code 199-7.16(1)(a) (2023). The hearing began August 22, 2023. Intervenor Hirth's motion was not filed until September 9, 2023, well after the August 15, 2023 deadline.

There is nothing about Intervenor Hirth's motion that supports a sufficient showing of good cause for not complying with the rule. The parties had ample opportunity to obtain information, to the extent relevant, regarding any connection between Summit Carbon Solutions and Summit Ag during the discovery period and chose not to do so. No party requested the deposition of Mr. Rastetter or any board member, executive officer, or employee of Summit Ag before the hearing. No party listed Mr. Rastetter or any board member, executive officer, or employee of Summit Ag as a witness for the hearing. Witness lists were due August 14, 2023, and witness lists were required

to be updated by August 25, 2023. There is nothing contained in the sealed versions of the offtake agreements, which were produced on August 19, 2023, that provides justification to now conduct discovery into any connection between Summit Carbon Solutions and Summit Ag, or into any of Summit Ag's investments or its corporate structure, that could not have been conducted before the scheduled hearing.

Accordingly, the Motion should be denied as untimely pursuant to Iowa Administrative Code rule 199-7.16.

II. The Motion is Unsupported and Lacks Merit.

Intervenor Hirth's motion stands on the false assertion that Summit Ag "is Summit Carbon Solution's parent company." (Motion at ¶ 4(b)). Intervenor Hirth relies on this parent/subsidiary relationship to support her theory of a "vertically-integrated monopoly" despite the fact that Mr. Pirolli testified in response to direct questions from Ms. Ryon that Summit Ag is not the parent company of Summit Carbon Solutions. (*See* 9/6/2023 Rough Tr. 108:3-13).

As described in Mr. Pirolli's testimony, Summit Ag is not a parent company or holding company of Summit Carbon Solutions. (*See Id.*). Summit Ag and Summit Carbon Solutions are separate and distinct business entities. While Mr. Rastetter is an investor in Summit Carbon Solutions, and serves on the board of Summit Carbon Solutions, Mr. Rastetter is only one of eight board members and does not have the ability to control the corporate strategy of Summit Carbon Solutions. (*See Id.*). Thereby the business strategy and investments of Mr. Rastetter and Summit Ag have no relevance to the public convenience or necessity of the pipeline proposed by Summit Carbon Solutions.

There is absolutely no legitimate justification to subpoena Mr. Rastetter in this permit proceeding to testify regarding the corporate structure and business investments of a separate

business entity that is not the parent company of, and does not have control over, Summit Carbon Solutions.

WHEREFORE Summit Agricultural Group, LLC and its member, Bruce Rastetter, respectfully request that the Iowa Utilities Board deny the intervenor's Motion to Subpoena Bruce Rastetter.

/s/ Spencer S. Cady

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